

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re Novartis and Par Antitrust Litigation

Case No. 1:18-cv-04361-AKH

This Document Relates to:

All Actions

**[PROPOSED] STIPULATED SUPPLEMENTAL PROTECTIVE ORDER FOR ESI  
HIGHLY CONFIDENTIAL MATERIAL PRODUCED BY END PAYOR PLAINTIFFS**

Pursuant to Fed. R. Civ. P. 26(c), the parties to the above-styled coordinated actions (“Actions”), as well as non-party Express Scripts, Inc. (“ESI”), propose that the terms and conditions of this Supplemental Protective Order govern the production and handling of ESI Highly Confidential Material, defined below, produced by the End Payor Plaintiffs (“EPPs”). The Court, finding that good cause exists for entry of this Supplemental Protective Order to prevent unauthorized disclosure and use of information that ESI asserts constitutes trade secrets and other confidential information, during and after the course of the litigation, **HEREBY ORDERS AS FOLLOWS:**

1. **ESI Highly Confidential Material.** For purposes of this Supplemental Protective Order, “ESI Highly Confidential Material” shall mean the documents and testimony relating to the documents produced at UFCW LOCAL 1500-EXFG-000456-653 and LEHB-EXFG-00000115, LEHB-EXFG-00000154, and LEHB-EXFG-00000184 and any future documents agreed to by the parties and ESI.

2. **Existing Protective Order.** Except to the extent an issue is specifically addressed by this Supplemental Protective Order, the existing Stipulated Protective Order (the “Protective



Order”) in the Actions, dated September 26, 2018 (ECF No. 95), governs the production, handling, use, and disposition of ESI Highly Confidential Material.

3. **Use of Material.** All information produced by EPPs and designated by ESI as Highly Confidential Material, as described in paragraph 2 of the Protective Order and as ESI Highly Confidential Material in this Supplemental Protective Order, shall be used by a recipient thereof solely for the purposes of the Actions and not for any business or competitive purposes or used in any legal proceeding other than the Actions, except as permitted by court order, or as agreed to by ESI (as defined below).

4. **Disclosure of ESI’s Highly Confidential Material.** Paragraph 10 of the Protective Order governs the disclosure of ESI Highly Confidential Material with the following additional requirements:

A. **Experts.** Before the parties may provide ESI Highly Confidential Material to any experts, as defined in Paragraph 9(e) of the Protective Order, their counsel must first verify that the expert with whom they would like to share the information is not, other than in connection with consulting or expert services being provided in connection with threatened or pending litigation, currently involved in or engaged to become involved in evaluating, negotiating, or advising on contracts with pharmacy benefit managers. The verification shall be made via e-mail, to ESI’s counsel, Matthew Knepper and Sarah Zimmerman at Husch Blackwell LLP. In making such a verification, the parties need not disclose the experts with whom they are sharing the information, but the expert shall sign the verification attached hereto as Exhibit A, which shall be maintained by counsel for the party disclosing each expert (the “disclosing party”).

i. If the expert cannot make such a verification, the disclosing party shall notify ESI’s counsel that an expert has been retained who cannot sign the verification.

ii. The disclosing party and ESI agree to meet and confer in good faith regarding disclosing party’s request to disclose ESI Highly Confidential Material to said expert.



The disclosing party agrees that information related to its request including the expert's name and reason the expert cannot make such verification will not be unreasonably withheld. ESI agrees to evaluate disclosing party's request in good faith and that consent to the disclosing party's request will not be unreasonably withheld. The parties agree to consider whether redacted copies of ESI Highly Confidential Material would be sufficient for disclosure to the expert.

iii. If the issue cannot be resolved, the disclosing party may raise the issue with the Court. If the issue is raised with the Court, ESI shall bear the burden of demonstrating why the ESI Highly Confidential Material must not be shared with the disclosing party's expert.

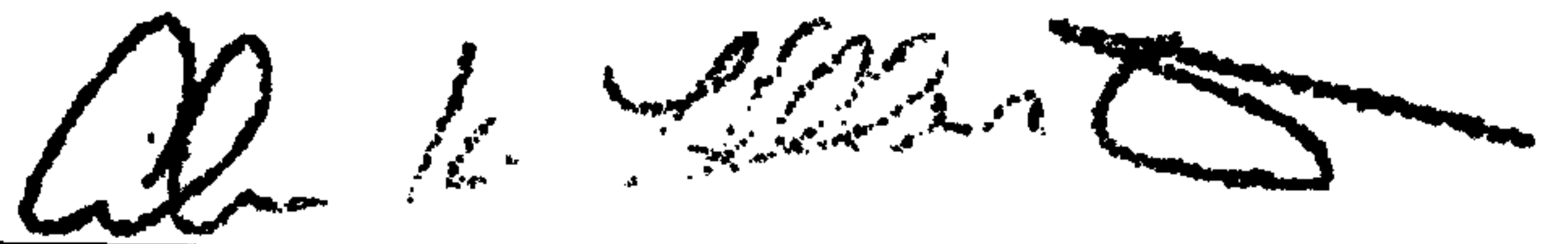
iv. No ESI Highly Confidential Material may be disclosed to any proposed expert or consultant until such time as the disclosing party and ESI are deemed to have agreed upon disclosure to the expert or consultant.

**B. In-House Legal Personnel.** Before the parties' counsel may provide ESI Highly Confidential Material to their clients' in-house legal personnel, as permitted by Paragraph 10(c) of the Protective Order, they must first verify that the in-house legal personnel with whom they wish to share the information are not currently involved with the drafting or negotiating of pharmacy benefit management contracts. The verification shall be made via e-mail, to ESI's counsel, Matthew Knepper and Sarah Zimmerman at Husch Blackwell LLP. In making such a verification, the parties need not disclose the in-house legal personnel with whom they are sharing the information.

**5. Violations.** The Court has jurisdiction to enforce this Order and to grant relief, as authorized by law or in equity, for any violations thereof.

SO ORDERED.

Dated: June 3, 2020

A handwritten signature in black ink, appearing to read "Alvin K. Hellerstein", written over a horizontal line.

The Honorable Alvin K. Hellerstein  
United States District Judge



**EXHIBIT A**

**VERIFICATION UNDER STIPULATED SUPPLEMENTAL PROTECTIVE ORDER  
GOVERNING ESI HIGHLY CONFIDENTIAL MATERIAL AND DOCUMENTS  
BETWEEN EPPS and ESI**

I, \_\_\_\_\_, have been retained by \_\_\_\_\_ to serve as an expert as defined in paragraph 9(e) of the Stipulated Protective Order. I verify that I am not currently involved nor have I been engaged to become involved in evaluating, negotiating, or advising on contracts with pharmacy benefit managers.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

So stipulated and agreed to by the following counsel of record:

DATED: June 1, 2020

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